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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/917,081	07/30/2001	Joseph K. Mosis		9106

7590 06/24/2003  
Gabrielle Tetreault, Esq.  
306 E. Main Street  
Suite 201  
Stockton, CA 95202

EXAMINER

PHILLIPS, CHARLES E

ART UNIT	PAPER NUMBER
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3751

8

DATE MAILED: 06/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notice of Abandonment**

Application No.

09/917,081

Examiner

Charles E. Phillips

Applicant(s)

MOSIS, JOSEPH K.

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 09 April 2002.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☒ A reply was received on 13 January 2003 but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$ \_\_\_\_\_ is insufficient. A balance of \$ \_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$ \_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$ \_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:  
  
see attached explanation

  
Charles E. Phillips  
Primary Examiner

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Art Unit: 3751

37 CFR 1.33(b) states:

(b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:

- (1) A registered attorney or agent of record appointed in compliance with § 1.34(b);
- (2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a);
- (3) An assignee as provided for under § 3.71(b) of this chapter; or
- (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

The paper submitted on January 13, 2003, which would have been treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181, is noted. The person signing the paper, Gabrielle A. Tetreault, does not appear to have authority to sign papers for this application. 37 CFR 1.33(b). It is further noted that the requested change of address in this paper cannot be accepted since it is not a properly signed paper.

Applicant may wish to consider filing a proper petition to withdraw the holding of abandonment with sufficient evidence to show that a timely response was made to the Office action mailed April 9, 2002.

Should applicant not be able to provide a sufficient showing that a proper response was filed, applicant is advised that the abandonment of this application may only be overcome by filing a petition to revive under 37 CFR 1.137. A petition to revive may be appropriate if applicant's failure to reply was either unavoidable or unintentional, as set forth below.

Art Unit: 3751

**A. Failure to reply was unavoidable.**

A petition to revive an abandoned application on the grounds that the failure to reply was unavoidable (37 CFR 1.137(a)) must be accompanied by: (1) the required reply (which has been filed); (2) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; (3) any terminal disclaimer required pursuant to 37 CFR 1.137(c); and (4) the \$55 petition fee as set forth in 37 CFR 1.17(l). No consideration to the substance of a petition will be given until this fee is received.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable, as well as inadvertent. This must include: (1) a satisfactory showing that the cause of the delay resulting in failure to reply in timely fashion to the Office action was unavoidable; and (2) a satisfactory showing that the cause of any delay during the time period between abandonment and filing of the petition to revive was also unavoidable.

A terminal disclaimer and the \$55 terminal disclaimer fee is required under 37 CFR 1.137(c) if the application is: (1) a design application, (2) a utility application filed before June 8, 1995, or (3) a plant application filed before June 8, 1995. The terminal disclaimer must dedicate to the public a terminal part of the term of any patent granted the application equivalent to the period of abandonment of the application, and must also apply to any patent granted on any application containing a specific reference under 35 U.S.C. 120, 121 or 365(c) to the application for which revival is sought.

**B. Failure to reply was unintentional.**

A petition to revive an abandoned application on the grounds that the failure to reply was unintentional (37 CFR 1.137(b)) must be accompanied by: (1) the required reply (which has been filed); (2) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; (3) any terminal disclaimer required pursuant to 37 CFR 1.137(c) (see above discussion); and (4) the \$650 petition fee as set forth in 37 CFR 1.17(m). No consideration to the substance of a petition will be given until this fee is received. The Director may require additional information where there is a question whether the delay was unintentional.

The required items and fees must be submitted promptly under a cover letter entitled “Petition to Revive.”

Further correspondence with respect to this matter should be addressed as follows:

**By mail:**

**Mail Stop Petition**  
**Commissioner for Patents**  
**P.O. Box 1450**  
**Alexandria, VA 22313-1450**

By FAX: (703) 308-6916  
Attn: Office of Petitions

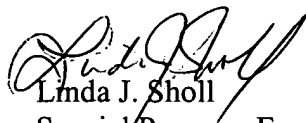
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By hand: Crystal Plaza 4, Room 3C23  
2201 South Clark Place  
Arlington, VA 22202

Telephone inquiries with respect to this matter should be directed to the Office of  
Petitions Staff at (703) 305-9282. For more detailed information, see MPEP § 711.03(c).

  
Linda J. Sholl  
Special Program Examiner  
TC3700